

JAPANESE ATROCITIES AND BRITISH MINOR WAR CRIMES TRIALS AFTER WORLD WAR II IN THE EAST

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ABSTRACT

It has been almost 60 years since the end of World War II. After the war, the Allied Powers conducted war crimes trials on Japanese war criminals. The Class A war criminals were tried in Tokyo by the International Military Tribunal for the Far East while the Classes B and C war criminals were tried by national military tribunals at various locations in the Far East by the respective Allied Powers. At the Tokyo Trial 28 major war criminals were tried while at the national military tribunals' level about 5,700 were tried and 4,405 were punished. Despite the significance of these trials, there is little effort from scholars to study them, especially the minor war crimes trials. The paper will touch upon the present status of the literature related to British minor war crimes trials and will highlight the lack of scholarly works on those trials and the need to study them and the related issues.

INTRODUCTION

Following the end of World War II, the Allies brought thousands of Axis war criminals to trials. They were divided into major and minor war criminals. The German major war criminals were tried by the International Military Tribunal at Nuremberg while their Japanese counterparts were tried by the International Military Tribunal for the Far East at Tokyo. The thousands of Allied minor war criminal trials both in Europe and the East were little studied.

Following the end of the war, the Britain, US, France, the Netherlands, Australia, New Zealand, Canada, China and the Philippines conducted thousands of minor war crimes trials in the East. The aim of this paper is to highlight the

Japanese atrocities in British control territories in the East during World War II, the British post-war, minor war crimes policy and trials in those territories, the general opinion about them and the current situation in academic research on those trials and to draw attention of scholars for future research.

JAPANESE WAR CRIMES IN THE BRITISH TERRITORIES

The Second World War in the Far East began with the Imperial Japanese Imperial Army attack on Kota Bharu, Malaya in early morning on 8th December, 1941. It was followed with the landmark event of the surprise attack on Pearl Harbour on 7th December 1941. Hong Kong was conquered by the Japanese on 25th December 1941 (this difference in date is due to time difference). British Borneo was occupied a few days later, Malaya and Singapore was conquered on 15th February, 1941. The Japanese troops were in Burma from December 1941 until August 1945. From the onset of the war until the defeat of Japan on 15th August 1945, the Japanese military personnel committed horrendous atrocities on POWs and subjects in the occupied territories. The atrocities committed were on a massive scale and so common in nature, that the only conclusion one could form was that they were either secretly ordered or willfully permitted by the Japanese Government or individual members and leaders of the Japanese armed forces.¹

Among the worst atrocities in British colonial territories were the massacre of the Chinese in Singapore,² the slaughter of surrendered Australian and Indian soldiers at Parit Sulong³ and Muar⁴ in Johore, the shooting of Lieutenant/Sergeant Keiller of the Australian Infantry Force while he was a sick prisoner at Yong Peng, Johore on 22nd January 1942,⁵ the death-march of about 1,000 British and American POWs for about 116 miles in horrible conditions from Sandakan to Ranau in East Malaysia,⁶ the massacre of wounded soldiers, patients, civilian and military medical staff at Alexandra Military Hospital in Singapore,⁷ the shooting of 14 Australian POWs on the Reformatory Road, Bukit Timah, Singapore,⁸ the shooting of 8 Australians at St. Patrick Hospital, 3 Straits Settlements Volunteers, and a number of European and Indian civilians who were POWs in Singapore on 15th April 1942,⁹ the shooting of Malay Regiment officers at Bedok, Singapore on the night of 28th February 1942,¹⁰ the execution of 4 POWs for trying to escape at Changi Beach,¹¹ the attempted execution by beheading and partial burial of Private Brien, 2/19 battalion, AIF after he had been held by the Japanese as a wounded POW since 26th February 1942,¹² the massacre of 160 Chinese in a village about one mile from Batu Caves for not giving information on Colonel Chapman's camp,¹³ the massacre of 40 civilians at Junjong, Kulim, Kedah,¹⁴ the massacre of about 250 students at the Chung

Ling High School in Penang,¹ the slave-labour of thousands of POWs and Malayan labourers in extreme conditions in the construction of the Burma-Siam Death Railway,² the incarceration of thousands of POWs at the Changi and other prisons, the forced concentration of 16,000 POWs at the Selarang Barrack designed for 800 to force them to sign a document not to escape in deplorable conditions,³ the overcrowding of 12,000 POWs at the Changi Gaol meant for 600 prisoners,⁴ the construction of an airfield at Changi with undernourished POWs,⁵ and the decapitation of captured airmen in Singapore and Malaya. There were also massacres of the local population in Ipoh (December 1941), Langkap (Perak),⁶ Penang,⁷ Katonga (January 1942), Singapore (February-March 1942), Panjang (February 1942), Ulu Tiram (Johore),⁸ Malacca (July 1945), the massacre of 5,000 Chinese in the state of Negeri Sembilan,⁹ the massacre of two hundred men and the mutilation of all women in a village in reprisal of British soldiers demolition activities¹⁰ and other places in Malaya and Singapore.¹¹

Atrocities were also committed in other areas under British control. In Sarawak, there were massacres in Miri and Kuching,¹² in Burma, the Kalagan Village Massacre,¹³ massacres in the Car-Nicobar and Andaman Islands.¹⁴ There were the ill-treatment of thousands of Indian POWs in New Guinea and other parts of the Netherlands East Indies,¹⁵ the torture and inhuman treatment of POWs and Asian coolies in the hell-ships,¹⁶ the cannibalism Asian POWs and natives by Japanese soldiers in Papua New Guinea,¹⁷ public humiliation of Allied POWs in Seoul (South Korea), Chosen (Manchuria), Singapore and Malaya.¹⁸

Torturing and inhuman treatment of POWs and civilians by Japanese, especially by the *Kempetai* (military police) were common as in other occupied areas.¹⁹ The *Kempetai* centres in Singapore (YMCA, Central Police Station, Oxley Street, Smith Street and others), Kuala Lumpur, Victoria Point, Ipoh, Penang and all other major towns in Malaya were noted for their brutalities. The *Kempetai* was so notorious that most of the chiefs' names were referred after the title 'Tiger'.

On the whole, it could be said that the Japanese military forces had committed horrible atrocities and responsible for the death of thousands of POWs and innocent civilians during the war and the period of occupation.

THE BRITISH WAR CRIMES POLICY

The British war crimes policy in the East was part of the Allied war crimes policy adopted in Europe. From the beginning of the war, the Allies made announcements that the Japanese would be made answerable for their atrocities. During the course of the Second World War, the Governments of most of the Allied Nations made repeated announcement of the intention to demand as one of the terms of surrender for trials and punishment of enemy personnel who were accused of war crimes. On 25th October 1941, Prime Minister Winston Churchill said that retribution for those crimes must henceforward take its place among the major purposes of the war.¹ The Japanese were warned formally about the consequences of their brutalities during the London Agreement of 13th January 1942. Following the London Agreement, the Inter-Allied Declaration on Punishment of the War Criminals and the "*Comite Inter-Aliee pour la Repression de Crimes de Guerre*" were established to investigate war crimes and prepare materials for further steps to be taken by the Governments concerned.² On 6th August 1942, the Government of the United Kingdom issued an *Aide Memoire* explaining the general principles of its future war crimes policy.³ Prime Minister Churchill while talking in the House of Commons on 8th September 1942, announced the British Government's agreement with President Roosevelt's warning that the Japanese will be tried for their atrocities.⁴ On the same day, President Roosevelt confirmed that a provision for war crimes trials would be included in the Surrender Instrument of Japan. Soon Prime Minister Winston Churchill along with President Roosevelt warned the Japanese again that they would be punished for their atrocities. On 3rd October, 1942 in reply to the St. James Declaration, the United Kingdom suggested the formation of a "Fact-Finding Commission" to investigate all matters of violation of the laws of war and atrocities committed by the enemy. In Britain, the issue of war crimes was discussed in the House of Lords by Lord Maugham on 7th October 1942 and in reply Lord Simon, the Lord Chancellor, announced that a United Nations War Crimes Commission (UNWCC) for the investigation of war crimes would be formed and the trials of the war criminals would be one of the conditions of the armistice.

At the meeting of the representatives of seventeen of the Allied Nations in October 1943, the UNWCC was established with London as its headquarters. At its meetings in London, there were repeated expressions of an intention to provide the war crime defendants with fair trials.¹ Its purpose was to collect, record and investigate evidence of war crimes and their perpetrators, to liaise

with national governments to his end, and at a later stage to advise governments on the legal procedures to be adopted in bringing suspects to trial. It was the responsibility of the national governments concerned to act upon the evidence supplied by the Commission.³⁹

In January 1944, Anthony Eden, the British Foreign Minister, warned that neither government would forget those acts or relent in their determination to mete out just punishment.⁴⁰ In May 1944, the Chungking Sub-Commission of the UNWCC was established to prepare lists of suspected Japanese war criminals.⁴¹ In December 1945, in line with the decision of the October 1943 Moscow Conference, the Far Eastern Commission (FEC) was established as the supreme policy making body for matters related to war crimes trials in the East. On 26th June 1945, the International Conference on Military Trials was convened in London during which there were protracted negotiations between the four Allied Powers.⁴² But it was at the Potsdam Declaration of 26th July 1945, where the basic policy for the trials and punishment of Japanese war criminals was established and approved by the US, Britain and China.⁴³ The Potsdam Declaration stated:-

“(6) There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest.....”

“(10) We do not intend that Japan be enslaved as a race or destroyed as a nation but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners.....”

With the end of the Second World War, there were divided opinions amongst the Allies with regard to the punishment of the Axis war criminals and there were three options to deal with them.⁴⁴ The first option was that whoever in their opinion was guilty of the worst excesses and breaches of the laws of war should be punished without a trial. The second option was that however heinous their conducts, they must be excused and set free. The third option was the accusations should not be accepted without the judicial process, that the accused were entitled to be heard in their own defence and that the conclusion should be reached by a tribunal free to acquit or to condemn, according to the weight of the evidence placed before it. The British and the Russians were in favour of the first and second options, which was the summary execution of the major military leaders and a general amnesty for the others but the Americans strongly resisted the first two options and preferred the last option of judicial trials.⁴⁵ Finally the other two powers succumbed to the American pressure and agreed for the last

The London Agreement of 8th August 1945, between the United Kingdom, the United States, the USSR and France declared on the categories of war criminals and the types of war crimes. It also specified the elements of a fair trial and other matters related to the trials. The criminals were generally divided into three main categories - Class A criminals were the major war criminals who were the political, civilian and military leaders responsible for crimes that had no geographical limitations. Class B war criminals were those accused of having committed the war crimes themselves while those in the Class C category were those war criminals, mostly senior officers accused of planning, ordering or failing to prevent the war crimes in the areas under their control.

Article 6 of the Charter of the International Military Tribunal (IMT) accepted at the 8th August 1945 London Agreement categorized and defined war crimes into three main types for which there would be individual responsibilities. The crimes were as follows⁴⁶:-

- (a) Crimes against peace⁴⁷: namely planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) War crimes: namely, violations of the laws or customs of war. Such violation shall include, but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners-of-war or persons on the seas, killing of hostages, plunder of public and private property, wanton destruction of cities, towns or villages or devastation not justified by military necessity;
- (c) Crimes against humanity:⁴⁸ namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers and accomplices particularly or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

In October 1945, the Far East Advisory Committee (FEAC) met in Washington and the policies, principles and standards by which Japan should fulfill its obligations were decided. It empowered General Douglas MacArthur, the Supreme Commander of the Allied Powers (SCAP), to convene military courts for the trials of Japanese war criminals. In December, 1945 the FEAC became the Far Eastern Commission (FEC) and a Special Committee No.5: War Crimes was established with the responsibility to identify, apprehend, try and punish the Japanese war criminals. In April 1946, the FEC issued the policy decision on Allied eastern war crimes policy.

Following the end of the war, the Japanese major war criminals were tried by the International Military Tribunal for the Far East (IMTFE) which was also known as the Tokyo Trial.⁴⁹ Britain played important role in the trial. Both Classes B and C war criminals were tried by the Allies for their crimes by military tribunals established by the respective Allied Powers in the places under their jurisdiction where the crimes were committed.⁵⁰

BRITISH MINOR WAR CRIMES PROGRAMME AND TRIALS IN THE FAR EAST

The atrocities committed by the Japanese military personnel were crimes in international law. They infringed the 1898 Hague Convention (II) With Respect to the Laws of Customs of War on Land, the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the 1929 Geneva Convention Related to the Treatment of Prisoners of War as well as customary international law. In line with the London Agreement of 8th August 1945, the British military authorities decided to try the Japanese minor war criminals under the Royal Warrant of 1945 and measures were taken to bring the Japanese war criminals to justice in places where they committed the crimes.

Following the surrender of Japan in Tokyo on 2nd September 1945, the Japanese military forces in Southeast Asia surrendered to the British military in Singapore on 12th September 1945. The British military issued directives to the British military authorities on the ground to detain those Japanese who were in charge of the POWs camps, the members of the *Kempetai* and others who were believed to be responsible for war crimes. There were three war crimes investigation teams in Malaya and Singapore with Singapore as the linchpin for British war crimes programs in the Far East.

On 5th September 1945, with the end of the war, 708,000 Japanese soldiers surrendered to the British military authorities in the Far East. By February 1946, most of them were repatriated to Japan and the number dwindled to 203,000.⁵¹ Several thousands of Japanese soldiers were detained to sort out their involvement in war crimes. Soon 9,000 war crimes suspects were identified with *prima facie* evidence for prosecution but many were repatriated to Japan on order from London. In April 1946, 7,500 were identified for this purpose. By November 1946, the figure was further reduced to 2,000.⁵² With regards to the selection of the accused, it was announced that it was be restricted to those in which a sentence of seven years or more was likely to be inflicted and those who were charged with offences for which sentences were not likely to be passed therefore released together with those against whom the evidence was not sufficiently clear.⁵³ Finally only 920 Japanese war crimes suspects were brought to trials. Most of the accused were Japanese soldiers who were junior officers and other ranks and a few Japanese civilians. There were also some Koreans, Taiwanese, a Hungarian and a few British subjects amongst those finalized for the trials.

BRITISH MINOR WAR CRIMES TRIALS IN THE FAR EAST

Following the end of the war, Singapore became the center for British war crimes program. In October 1945, a special court was established to try such cases.⁵⁴ The British conducted their war crimes trials under the Royal Warrant dated 14th June 1945 and the Rules of Procedure 1926.⁵⁵

The British minor war crimes trials were held at different locations in the East. In Singapore 129 trials,⁵⁶ in Malaya (66 trials - Kuala Lumpur -39 trials,⁵⁷ Taiping - 8 trials, Johore Bahru - 4 trials, Ipoh - 2 trials, Malacca - 1 trial⁵⁸, Kota Bharu -2 trials, Penang -1 trial , Alor Star -2 trials,⁵⁹ Kajang -1 trial, Teluk Anson -1 trial, Raub -1 trial, Kampar -1 trial, Bentong -1 trial and Kuala Kangsar -2 trials..⁶⁰ British North Borneo 19 trials (Jesselton - 13 trials Labuan-6 trials),⁶¹ Hong Kong (45 trials), Rangoon (31 trials) and Maymo (7 trials).⁶²

There is some disagreement amongst scholars over the precise and final statistics on the British war crimes trials in the Far East. According to R.J. Pritchard, the most widely researched scholar in the area, there were 930 prosecutions of 890 defendants where 40 defendants were tried more than once. In 150 prosecutions, the accused were not guilty. In 776 prosecutions, they were

convicted. In 2 prosecutions, the cases were abandoned. 2 defendants were succeeded on the plea of being British subjects and 1 unfit for trial. 533 prosecutions convicted in terms of imprisonment and 237 were given death and 220 of them were executed.⁶³

When the Cold War conflict became more serious, the United States changed its policy on Japan from that of rehabilitation to reconstruction as it needed the cooperation of Japan as an ally against communist threat in the Far East. The Japanese took advantage of the situation and campaigned for the termination of the war crimes prosecution as well as other benefits for the convicted criminals. The United States was supportive of the Japanese request while Britain and Australia were resistant. The US used strong arm tactics and exerted pressure on them to terminate the prosecution by December 1948. In the San Francisco Peace Treaty signed on 8th September 1951, the Allies agreed to transfer the responsibility for the care, control and the maintenance of the convicted Japanese war criminals at the Sugamo Prison in Tokyo with effect from 31st March 1952. In October 1952, Britain agreed with Japan that the sentence of the convicted criminals would begin from the date of the arrest and not the date of the convictions. Later on, Britain further agreed for one third remission of sentences for good behaviour. On 28th July 1955, Britain further agreed to grant clemency to war criminals by which it agreed to reduce the sentences of those punished with life imprisonment to fifteen years. By these change of policies by Britain, potential war criminals escaped from prosecution and most of the convicted war criminals had early releases from prison.

LITERATURE REVIEW

Since the end of the Second World War, the existing literature on the Japanese war crimes trials reveals that most works have been restricted to the IMTFE trial in Tokyo. For some reasons scholars did not show much interest in the thousands of 'minor' war crimes trials that were held in the Far East although the number of those tried and punished was in thousands. In the Far East, the Allies tried some 6,000 Japanese in several thousand 'minor' war crimes trials during and after the war all over the Pacific. The records of these trials were fragmentary and no systematic study has yet been published.⁶⁴ Among the minor war crimes trials, it was only the Yamashita Trial that had received some attention possibly because he was the most famous Japanese Army General during the Second World War and the United States wanted to find him guilty for command responsibility in order to set a precedent for the forthcoming war crimes trials in Tokyo and the Far East.⁶⁵ More importantly, those involved in his trial, especially members of his defence team brought to the attention of the world the injustice

done to him during that trial.⁶⁶ The Homma Trial which was also known for its unfairness had been studied but not in-depth.⁶⁷ There is a single piece of work on the Australian trial of Lieutenant-General Takuma Nishimura, but it is more journalistic and not a legal analysis of the trial in terms of justice.⁶⁸ Only recently there have been some work done on the Australian Death-Railway Trials.⁶⁹ One other piece of work on the Sandakan-Ranau Death March is more of an historical account but with some information on the war criminals and the sentences that they received.⁷⁰ All other minor war crimes trials only received a cursory treatment and almost untouched or ignored by scholars. With regard to the British minor war crimes trials, very limited work has been done. The few works done were on the British war crimes trials in the Far East with some references to the events in Malaya and Singapore.⁷¹ In almost all these trials, both the major and minor war crimes trials, issues related to justice became a point of contention. While some aspects of justice had been referred with regard to the Tokyo Trial, there is not even a single piece of work on the issue of justice on the British minor war crimes trials held in the Far East. Despite the claim from some that the trials were just or unjust, there were no explanations how they came to such a conclusion.

Such indifference towards minor war crimes trials could be explained by two main reasons. Firstly, in post-war international politics, realism became a dominant political philosophy. Scholars prefer to work on areas related to *realpolitik* which are more rewarding. Matters related to justice in war crimes, especially those related to Japanese minor war crimes trials are not worthwhile, except for those who believe that justice is a fundamental value that should not be sacrificed. After all, idealism was a discredited theory in international relations after World War II.

Secondly, the records of the trials were also not easily available to scholars despite the much publicized claim that the trials have pedagogic value to humanity in the understanding of the Second World War. For instance, the records of the British war crimes trials in the Far East at the Public Records Office at Kew, London were classified documents until 1976 and the Official Secrets Act prohibited anyone, especially those who served in the trials, from writing anything about them. Some of the files on those trials were opened to the public only in 1976, 1996 and 1997 and others are still classified under the 75 years rule which means that they will be available for research only in 2021.⁷²

Some of those war crimes trial transcripts and other records relating to war crimes investigations are also available at the Imperial War Museum in London, the British Museum, the School of Oriental and African Studies, the Institute of Contemporary Studies, the House of Commons and House of Lords libraries and at Duxford.⁷³ Research at the National Archives in Singapore, Kuala Lumpur and Penang also revealed the absence of any trial transcripts on the British war crimes trials that were held in Malaya and Singapore. However, some oral history documents related to the Japanese occupation and atrocities and photographs of a few trials were available in both archives. There were some reports of the trials in the newspapers in Malaya and Singapore such as *The Straits Times*, *Malay Mail*, *Straits Budget* and others.

VIEWS ABOUT THE BRITISH MINOR WAR CRIMES TRIALS

At present there are few published works on the British minor war crimes trials in the Far East, especially in relation to whether they were conducted in line with the principles of justice. These literature reveal mixed views about the fairness of the trials although three academics who studied these trials; R.J. Pritchard, P.R. Piccigallo and Simon Smith were of the view that most of these trials were fairly conducted. However, they did discover some elements of unfairness in some of those trials but were of the view such situation was quite normal when one handles such big war crimes trial programme in the immediate aftermath of the war in situations of much constraints.⁷⁴ However, none of them explained the basis for arriving at the ultimate conclusion in relation to the fairness of the trials as their works were more of historical in nature.

In contrast, some of the war criminals and victims had expressed their dissatisfaction with the outcomes of some of those trials. Some of the Japanese war criminals who had already served the sentences were of the view that the trials were unfair, the sentences were heavy and they were the scapegoats for the misdeeds of the senior officials.⁷⁵ Some even said that they were innocent but were victimised by the victors as they only wanted someone to blame for what had happened.⁷⁶

Given that there were not much grouses after the trials, there were some opinions that the public in Malaya and Singapore was quite satisfied with the outcome of the trials. However, there were opposite views that most of the culprits were able to escape from the clutches of the law due to British inefficiency. There were some grievances that the British did not conduct the trials efficiently

and the punishments were rather lenient.⁷⁷ Some complained that the sentences given to the criminals were dependent upon the racial background of the victims. If the victims were Asians, the sentences were light and heavy if they were Whites.⁷⁸

The records at the Public Records Office at Kew in London show that in Malaya and Singapore alone, the British had conducted 195 war crimes trials, with 129 in Singapore and 66 in Malaya. The information on these trials was found in hundreds of files covering thousands of typewritten trial transcripts. Other related information was kept in other *Straits Times*, *Straits Budget*, *The Echo*, *The Malay Mail* files.⁷⁹ There were scattered reports of the trials in the Malayan newspapers such as the and others. The following four trials were part of the PhD thesis, "*Second World War Japanese Atrocities and British Minor War Crimes Trials: The Issue of Fair Trial In Four Selected British Minor War Crimes Trials In Malaya and Singapore In 1946-1947*" at the Law Department, University of Wales, Aberystwyth in 2004.⁸⁰

(1) THE TRIAL OF GOZAWA SADAICHI AND NINE OTHERS (SINGAPORE)

The Gozawa Sadaichi and Nine Others Trial was selected as one of the trials for this research because it was the first British minor war crimes trial to be held in the Far East. There were some criticisms that the trial was chosen as the first British war crimes trial due to political reason as there were other notorious war crimes committed on the people of Malaya which should have been given priority. It was alleged that the Gozawa Sadaichi Trial was chosen to neutralise the negative political implications of the Indian National Army Trials that were then taking place in Delhi. By staging the Gozawa Sadaichi Trial, it was alleged that the British wanted to reveal to the Indian public, the torture that the Indian POWs who refused to join the INA, received in the hands of the Japanese. This trial was also selected for this study as its judgement could set a precedent for the forthcoming minor war crimes trials in the Far East. Despite being the first British minor war crimes trial, the work on this trial is negligible and none was done to evaluate its fairness, except some minor comments that the trial was fair in the works of L.C. Green and Piccigallo.⁸¹ Colin Sleeman's *Trial of Gozawa Sadaichi and Nine Others* was a verbatim report and similar to the transcripts found in *File WO 235/889 (Gozawa Sadaichi and Nine Others Trial)* at the Public Records Office (PRO), Kew, London. At the moment, there is not even a single piece of substantive work on this trial. The PhD research found that the British military had conducted the trials in a fair manner in line with the trial procedures.

(2)THE PENANG KEMPETAI TRIAL (PENANG, MALAYA)

The Penang *Kempetai* Trial was the biggest war crimes trial in the Malayan Union in which 35 *Kempetai* (the Japanese Military Police) members were tried for the deaths of more than 1000 locals, especially after torture at the Penang Prison. There were 35 accused, 2 officers, 29 other ranks and 4 civilians. The trial lasted for 23 days and 21 of the accused were condemned to death, 11 were sentenced to different terms of imprisonment and 3 were acquitted. Despite being the biggest war crimes trial in the Malayan Union and had received wide publicity, the trial has been ignored, except a few passing reference in a few lines in the Piccigallo's work.⁸² Bryan C. Cooper's *Decade of Change. Malaya & the Straits Settlements 1936-1945* provides some information on the trial. All the victims with the exception of two were Asians. Amongst the accused 19 were other ranks and 2 officers of middle ranks. By this trial, it was possible to evaluate whether the sentences given to the accused were light because the victims were Asians and whether the Japanese lower ranks were selectively prosecuted to protect the senior officers responsible for those atrocities. As there were no other information on the trial, the research heavily dependent on the trial transcripts found in *File WO 235/931 (Penang Kempetai Trial)* at the PRO and the *Papers of Lieutenant Colonel H.E.R. Craig-Hallam, 931-Hishigawa Yoshinaru and 34 Others (Penang Kempetai Trial, 30th August 1946)* at the Imperial War Museum, London. The research showed that the trial was conducted in a very fair manner. It could be considered another model for a fair trial.

(3)THE TRIAL OF LT. COLONEL SUMIDA HARUZO AND TWENTY OTHERS (THE "DOUBLE TENTH" TRIAL) (SINGAPORE)

This trial was one of the most well-known war crimes trials in the Far East in which 21 *Kempetai* members were brought to trial. Only 1 was an officer, 16 were other ranks and 4 were civilians. Most of the victims of the atrocities were senior British civil servants with some Asians, therefore the trial was chose to evaluate the view that the punishment on criminals who committed atrocities on Whites were given heavier sentences compared to those who committed crimes on Asian victims. Despite being one of the most celebrated minor war crimes trials in the Far East, similar to other trials, there were only some minor references to this trial in the existing literature and there is no substantive work. The research on *File WO 235/89 (Double Tenth Trial)* at the PRO, shows that Mallal B.A's *The Double Tenth Trial. War Crimes Court In Re Lt. Col. Sumida Haruzo and 20 Others* and Colin Sleeman's *Trial of Sumida Haruzo and Twenty Others (the "Double Tenth" Trial)* were verbatim reproduction of the trial transcripts

found at the PRO. Madam Elizabeth Choy, a victim of the tortures committed in this trial living in Singapore is an useful source of information. This research found the accused were given a fair trial and even it could be a model for a fair trial. The latest was Hayashi Hirofumi's "Massacre of the Chinese in Singapore and its Coverage in Post-War Japan", a paper presented at the conference, "The Japanese Occupation: Sixty Years After The End of The Asia-Pacific War" held in Singapore on 5-6th September 2005.

(4)THE CHINESE MASSACRE TRIAL (SINGAPORE)

The Singapore Chinese Massacre was not only one of the earliest but also the biggest war crime in the British colonial territories in the East. It is believed that, immediately after the fall of Singapore, the Japanese military had massacred between 5000 to 150,000 people in certain selected execution sites in Singapore. This trial was considered as the most controversial British minor war crimes in the Far East and there were some criticisms about the trial for the delay in conducting the trial and the sentences. Despite that, for some unknown reasons, there was some hesitance on the part of the British to commence the trial. It was only after it became a serious public issue in Singapore Chinese dailies, that the trial commenced in March 1947, after a long delay. The 7 accused in this trial were all officers - two Lieutenant-Generals, two Colonels, two Majors and one Captain. Following the trial, the Singapore Chinese community complained that the sentences were light and they demanded a retrial, hoping that all the accused would be sentenced to death. There were also some views that there were political interferences in the indictment of some of the criminals involved in that crime and the real culprits were able to escape from prosecution. Despite being such an important trial, no work has been done on the fairness of that trial, except Ian Ward's *The Killer They Called A God* which gave an exciting aspect of the mopping-up operation, certain aspects of the trial and the interference of politics in the interdiction of some of the war criminals. Ralph Modder's *The Singapore Chinese Massacre 18 February to 4 March 1942* provides some brief information on the killings and the trial.⁸³ Works on the history of Singapore and other eyewitness accounts of some individuals refer sporadically to the massacres but almost nothing has been written on the trial despite the lapse of 43 years since the trial.

CONCLUSION

The issues related to the British war crime trials are still an important and a living issue as some of the victims of Japanese atrocities were unhappy with the sentences given to these criminals and the compensations paid to the victims. For instance, the Japanese Labour Camp Survivors Association with 10,000 members is claiming £14,000 for each victim and the case was heard in Japan on 19th February 1998.¹ A panel of three judges postponed the judgement after the visit of Emperor Akihito to Britain in May 1998 during which the British war veterans staged demonstrations to show the Emperor their dissatisfactions over Japan's attitude towards the atrocities done to the Allied POWs.² The Malayan Chinese had forwarded some claims for the atrocities on them and for the return of \$50 million the Japanese extracted from them by threat. The memories of Japanese war atrocities are still a haunting the East, especially Korea, China, Taiwan and Japan. The issues of apology, the comfort women, compensation for the Korean and Allies war veterans, the visit to the Yasukuni Shrine by Japanese leaders are still burning issues and the remnants of war that hinder cordial relations between states in North-East Asia. On the other hand, the Japanese war criminals still harbour a sense of injustice done to them by the British war crimes authorities.

The IMTFE and the thousands of minor war crimes tribunals had tried and punished some of the criminals but the victim states and the people seemed to be not satisfied. The in-depth study of the Allied minor war crimes trials in the East will provide more lights on the war crimes as well as extent to which justice had reached them. R.R. Pritchard had completed a massive study, *The British War Crimes Trials in the Far East 1945-1948*. For some reasons, the work has not been published. Given the neglected status of the minor war crimes trials at the moment, the publication of his work will be a significant contribution towards further research on British minor war crimes trials in the Far East. In recent years, there were many publication in Japanese language on Japanese war crimes and minor war crimes trials. Translations of those writings into English Language will add further light to research on this area from the perspective of the Japanese.

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END NOTES

¹Roling, B.V., & Ruter, C.F. *The Tokyo Judgement: The International Tribunal for the Far East*, 29th April, 1946 – 12th November, 1948, APA-University, Amsterdam, 1977. p. 385.

²Immediately after the fall of Singapore, on 15th February 1942, the Japanese adopted a policy of eliminating those Chinese who would be a threat to them by an operation known as 'Sook Ching' or 'Purification by Elimination'. Thousands of Chinese men and youths were rounded-up and massacred for days from 21st to 23rd March 1942. It was estimated that between 40,000 and 100,000 were massacred, but generally accepted figure was 40,000. But the British and Japanese admitted a figure of only 5,000. Purcell, V, *The Chinese in Malaya*, Oxford University Press, London, 1948. p.p. 250-251; Leasor, James, *Singapore: The Battle that Changed the World*, Hodder & Stoughton, London, 1968. pp. 225-226; Shinozaki, Mamoru, *Syonan-My- Story: The Japanese Occupation of Singapore*, Singapore, 1975. p. 20; Holmes, R. Kemp, A., *The Bitter End: The Fall of Singapore, 1941-42*, Chichester, Sx: Bird, London, 1982. p. 181; Russell, Lord, *The Knights of Bushido: A Short History of Japanese War Crimes*, Cassell & Co., London, 1958. pp. 243-254; Ward, Ian, *The Killer They Called A God*, Media Masters, Singapore, 1996; Modder, Ralph, *The Singapore Chinese Massacre, 18 February to 4 March 1942*, Horizon books, Singapore, 2004; *File WO 235/1004*, Public Records Office, Kew, London.

³On 22nd January 1942, at the village of Parit Sulong, near Muar in Johore, the Imperial Guards Division tortured, machine gunned and burned alive with petrol about 110 Australian and 35-40 Indian soldiers who were wounded POWs. Based on the sole survivor of the massacre, Lieutenant Hackney, 2/29 Battalion, the remains of the victims were discovered. Bradley, James, *Cyril Wild: The Tall Man who Never Slept*, Woodfield, Bognor Regis, 1997. p. 121; *File WO 325/3*, Public Records Office, Kew Garden, London; Holmes R & Kemp A. *op. cit.*, p. 137; Wigmore, L., *The Japanese Thrust*, Australian War Memorial, Canberra, 1957. p 246-248; Roling B.V. & Ruter, C.F, *op. cit.* p. 39.

⁴Leasor, *op. cit.*, p. 236; Bradley, *Ibid*, p. 121.

⁵Bradley, J., *Ibid*. p. 121.

⁶The Ranau marches began early in 1945 when the Japanese feared that the Allies were preparing a landing at Kuching. The purpose of the marches was to remove the prisoners to prevent their liberation. The village of Ranau is in a jungle over 116 miles west of Sandakan in Borneo, on the eastern slope of the Mount Kinabalu. The trail from Sandakan to Ranau lies through dense jungle and is too narrow for vehicles. The first 30 miles are marshy and heavy with mud and slush. The next 40 miles are in higher country over short, steep hills. The next 20 miles are over mountain. The last 26 miles are all uphill and mountainous. Australian prisoners were moved along these hills. They

were suffering from malaria, dysentery, beri-beri and malnutrition before they were taken from the camp at Sandakan. They were beaten to start the march and forced to carry food and ammunition for the guards as well as their own scanty rations. One party of 40 persons were forced to submit to three days on this march upon 6 cucumbers divided amongst them. Those fell out of the marching column were shot or bayoneted to death. The marches continued until the first part of April, 1945. The trail was littered with corpses. Less than one third of the prisoners-of-war who began the marches reached Ranau. Only 6 out of the 2,000 who were prisoners at Sandakan survived, by escaping. Those left as too sick for the march at Sandakan died of disease or murdered by the guards. Roling & Ruter, *op. cit.*, p. 402-403; Dean, *op. cit.*, p. 135; Silver, L.M., *Sandakan: A Conspiracy of Silence*, Synergy Books International, Kuala Lumpur, (date of publication is not mentioned); Warren, Alan, *Singapore 1942. Britain's Greatest Defeat*, Talisman, Singapore, 2002. pp. 176-7.

⁷On 13th February, 1942 the hospital was captured by Japanese troops. They went through the first floor and bayoneted everyone in that floor. They entered the operating room where a soldier was under chloroform undergoing an operation and bayoneted the patient, the surgeon and the anaesthetist. They then went to the second floor and other parts of the building and removed the patients and the medical personnel and massacred them. Leaser, *op. cit.* p. 244; Holmes R & Kemp A, *op. cit.* p. 171; Rolling B.V., Ruter, C.F., *Ibid.*, p. 397 and 399; Bradley, *op. cit.*, p. 121; Lomax, E., *op. cit.* p. 73.

⁸Bradley, *Ibid.*, p. 121.

⁹*Ibid.* p. 121.

¹⁰Sheppard, *op. cit.*, p. 82.

¹¹On 2nd September 1942, General Fukaye Shimpei ordered Col. Holmes, the most senior officer and 6 of his colleagues in the Changi Prison to appear on Changi Beach. The 4 POWs were tied to posts in the sand. A firing squad of the members of the Indian National Army were ordered to shoot them. The first shots failed to kill them. Slow volleys finished them off as they lay on the bloody sand. Lomax, E., *op. cit.* p. 79; Kinvig, C., *op. cit.*, p. 143.

¹²Bradley, J., *op. cit.*, p. 121.

¹³Ming, Ho Tak, *Doctor Extraordinaire*, The Perak Academy, Ipoh, 2001.

¹⁴Interview with Mr. Velayutham at Kulim, Kedah, Malaysia.

¹⁵*Singa: The Lion of Malaya. Being the Memoirs of Gurchan Singh*, Eastview Production, Petaling Jaya, 1982. p. 57.

¹⁶The Burma-Siam Death Railway was Japan's war-time project to provide military supplies to the Japanese forces fighting against the British in Burma. It was meant to link Bangkok in Siam to Moulmein in Burma covering a distance of 250 miles (400 kilometres). The project was to be completed within 18 months and expected to be completed by November 1943. On General Hidaki Tojo's advice it was decided the prisoners of war in Singapore would be used in the construction of the project and the

Southern Army stationed in Malaya was made responsible to complete the project. The Japanese military authorities in Singapore informed the POWs that they would be taken to a different place where they would be given better food and comfortable place to recuperate. POWs from Singapore were brought in two groups to the site of the Burma-Siam Death Railway. The first group, the 'A Force' left Singapore by ship in August, 1942. The second batch, the 'F and H Force' left Singapore for Bangpong in Siam by rail in crowded freight trucks. The Japanese insisted to include the sick to be sent to the labour camps. During the journey, the prisoners were only given vegetable stew and during the last 24 hours of the journey, there was no food or water. From Bangpong, they were forced to march for 250 miles in two and a half weeks on a route over rough jungle trails and mountainous country. During the journey, the prisoners carried 2,000 non-walking sick prisoners. Those unable to walk were beaten by the guards. At the labour camps, there were no cover, no sanitary facilities nor medical care. No clothing were furnished and rations were inadequate. In total, 61,000 British, Australian, American and Dutch POWs were employed in the project. In order to supplement the POWs, the Japanese brought 250,000 Burmese, Tamil, Javanese, Malay and Chinese workers to work at the railway and they were worst treated. 16,000 POWs and 125,000 Asian workers died in the construction of the railway due to sickness, malnutrition, harsh treatments, lack of medical facilities and miserable living and exhaustive working conditions. Those who tried to escape were killed. Three war cemeteries along the railway line contain about 12,600 graves. The Japanese government, including General Hidaki Tojo was aware of the miserable conditions at the railway but nothing was done to ameliorate the situation. Roling, B.V. and Ruter, C.F., *op. cit.* pp. 403, 404; *Asiaweek*, 15th November, 1996; *The Times*, 13th January, 1998.

¹⁷Turnbull, C.M., *op.cit.*, p. 193. Lomax, *op. cit.*, pp. 79-80.

¹⁸Turnbull, *op.cit.*, p. 207.

¹⁹*Ibid.*, p. 207.

²⁰Langkap was a small town on the road to Teluk Anson (at present known as Teluk Intan) from Kampar. Some Japanese were murdered in that town. The Japanese Army surrounded the town and asked all the people to remain indoor. They then set fire to the town and shot anybody who came out of the burning houses. Zakaria, Tan Sri Datuk Aziz bin, *British, Japanese and Independent Malaysia: A Memoir*, Institut Tadbiran Awam Negara (National Institute of Public Administration), Kuala Lumpur, 1989. p. 14.

²¹Narayanan, Arujunan, The Penang Massacre, Paper presented at the 18th IAHA Conference, Taiwan, 6-10 December, 2004; File WO 235/931 (Penang Kempetai Trial), Public Records Office, Kew, London; Cooper, Bryan C, *Decade of Change. Malaya & the Straits Settlements 1936-1945*, Graham Brash, Singapore, 1998. pp. 587-614

²²*The Malay Mail*, October 1946; *Straits Chronicles*, 10th October, 1945.

²³Chiak, Cheok, Yeng, *op. cit.*; Before the fall of Singapore, the Chinese guerrillas engaged with the Japanese in Negeri Sembilan. In reprisal for this, the Japanese as soon as they established themselves in Negeri Sembilan had carried out a most brutal massacre at Titi, the Chinese mining centre of Jebebu District, in which thousands of supporters – men, women and children had been put to death. Chapman, *op.cit.* p. 198; *The Straits Budget*, 29th May, 1947.

²⁴Braddon, Russell, *The Naked Island in Great Stories of Courage and Endurance, Reader's Digest*, London, date not available. p. 153.

²⁵*File WO 235/1004*, Public Records Office, Kew, London.; Roling B.V. Ruter, *C.F.op.cit.* p. 397. Leasor, *op. cit.* pp. 255 and 256.

²⁶51 prisoners-of-war were massacred in Miri and hundreds of civilian internees were ill-treated in Kuching. Picigallo, *The Japanese on Trial: Allied War Crimes Operation in the East, 1945-1949*, University of Texas Press, London, 1979. p. 129 – 130; *London Times*, 12th December, 1945.

²⁷In this massacre, the Japanese killed and tortured 637 inhabitants of the Kalagan Village. Picigallo, R. Philip, *op.cit.*, p. 109;

²⁸The Japanese tortured and killed 152 civilians. *Ibid.* p. 107.

²⁹*Ibid.*, p. 207.

³⁰It was the policy of the Japanese Navy to cram the POWs at the hold of the hell-ships with meagre sanitary facilities. Sometimes they did not have any marks to show that they were carrying POWs and therefore many were torpedoed by Allied submarines. The *Tottori Maru* left Manila for Japan with 1900 American POWs. They were crammed at the hold of the ship. When the ship was torpedoed by the Americans, the POWs attempted to come out but they were shot by the Japanese soldiers before they tried to jump. Another ship, with 1750 European POWs (mostly Dutch), 600 Indonesian POWs (mostly Ambonese) and 5,500 Indonesian forced labour, was torpedoed near Sumatra on 19th September, 1944 and sunk. Only 279 European POWs, 312 Ambonese and 300 Indonesians were saved by a Japanese corvette. Brackman, *op.cit.*, p. 287.

³¹Tanaka, *op.cit.*, p. 9.

³²Waterford, *op.cit.*, p. 38.

³³Basir, Mallal, (ed.), *The Double Tenth Trial: War Crimes Court in Re Lt. Sumida Haruzo and Twenty Others*, Malayan Law Journal Office, Singapore, 1947, p. 11; Russell, Lord, *op. cit.*, pp. 274 – 281; Roling B.V. & Ruter C.F. *op. cit.* pp. 406-407.

³⁴Lachs, Manfred, *War Crimes: An Attempt to Define the Issues*, Stevens & Sons, London, 1949. p. 94.

³⁵This was attended by the governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, Yugoslavia and Free France National Committee and the Declaration was known as the Declaration of St. James Palace. United States, United Kingdom, USSR, China, Australia, India, South Africa, Canada and New Zealand were the observers. The Declaration contained the following:-

“(1) affirm that acts of violence thus perpetrated against the civilian population are at variance with accepted ideas concerning acts of war and political offences, as these are understood by civilised nations,

“(2) take note of the declaration made in this respect on 25th October, 1941, by the President of the United States of America and by the British Prime Minister,

(3) place amongst their principal war aims the punishment, through the channel of organised justice, of those guilty and responsible for these crimes, whether they have ordered them, perpetrated them or in any way participated in them,

(4) determined in a spirit of international solidarity to see to it that (a) those guilty and responsible, whatever their nationality, are sought for, handed over to justice and judged, (b) that the sentence pronounced are carried out., Lachs, p. 94 & 95; At this occasion, Wunz King, the Chinese observer said that all guilty persons would be equally dealt with according to law and authors of war would be held accountable for their acts. He directed his warning to Tokyo. Picigallo, *op.cit.* p.3.

³⁶The United Kingdom proposed that the policy and procedure regarding war criminals, including the question of the judicial tribunals to be employed, should be agreed by all the Allied Governments. In dealing with war criminals, the court should apply the laws already in existence and no special *ad hoc* law should be enacted. The punishment of war criminals should be as soon as possible after the end of the war, in order to ensure rapid justice, to prevent as far as possible wronged individuals taking the law into their own hands and to prevent trials dragging on for years that would delay the return of peace in Europe. It would be desirable ultimately to fix a limited period after the termination of hostilities during which all trials should be instituted. Each Allied Governments concerned should, as far as possible, draw up lists of criminals against whom it wishes to proceed and prepare evidence against them. Provisions should be included in the armistice terms for the immediate capture or surrender of wanted criminals, and this should not be left over until after the conclusion of a peace treaty. Otherwise it might prove impossible, as after the First World War, to obtain custody of the persons required.

³⁷Prime Minister Churchill in the speech said, “I wish most particularly to identify the British and the House of Commons with the solemn words which have been lately used by the President of the United States, namely, that those who are guilty of the war crimes will have to stand up before tribunals in every land where their atrocities have been committed in order that an indelible warning may be given to future ages and that successive generations of men may say: ‘ So perish all who do the like again’.” At that moment, the Allies did not refer to the Japanese war crimes as they had no information on the Japanese atrocities. Lachs, *Ibid.* p. 96 & 97.

³⁸United Nations was officially established on January 1, 1942. Prior to this the phrase referred to the alliance of Britain, the United States, the Soviet Union, China and 22 other nations against the Axis Powers of Germany, Italy and Japan. The functions of the UNWCC were primarily meant as fact finding. Wexler, Leila Sadat, The Interpretation of the Nuremberg Principles by the Court of Cessation From Touvier to Barbie and Back Again, *Columbia Journal of International Law*, 32: 201. p. 302.

(1) to investigate all cases referred to the Commission by any of the Governments of the United Nations of atrocities committed by, or by order of, the nationals of any of the countries at war with any of the United Nations against nationals of the United Nations.

(2) to collect, record and assess all available evidence, oral and written upon such atrocities.

(3) to direct their attention in particular, in the first instance to those cases which appear to be atrocities organised and committed in pursuance of a deliberate policy.

(4) to report from time to time, and as early as possible, to the Governments of the United Nations, cases in which the Commission is satisfied that an atrocity has been committed, naming where possible, the person or persons whom they consider responsible.

(5) to investigate, consider and report upon any other instances or classes of war crimes referred to them by the general consent of the Governments of the United Nations.

(6) to constitute such panels for the taking and recording of evidence, and to sit whether in panels or as a whole, in such places as the Commission may from time to time decide.

(7) to co-opt such expert technical advisers for the purpose of particular investigations as the Commission may consider necessary.

(8) to make recommendations upon the procedure by which war criminals should be dealt with after the war.

On the basis of the above agenda the Commission commenced its work. Lacht, *War Crimes, op. cit.* p. 97. In the course of its work, the UNWCC prepared 80 lists of "war criminals," which together comprise 36, 529 names (including Japanese), *Encyclopaedia Judaica*, Keter Publishing House Ltd., Israel, 1971. p. 294.

⁹The first official meeting of the UNWCC was held in January 1944, and the organisation continued to be active until 1948. The Soviet Union declined to participate. Maogoto, Jackson Nyamuya, *War Crimes and Realpolitik. International Justice From World War I to the 21st Century*, Lynne Rienner, London, 2004. pp89-90

⁴⁰Picigallo, *op.cit.* p. 4.

⁴¹*Ibid.* pp. 4-5.

⁴²Wexler, *op. cit.* p. 304.

⁴³The Potsdam Declaration called on the Japanese government to proclaim unconditional surrender of its armed forces and stipulated that the authority and the influence of those who have deceived and misled the people of Japan into embarking on world conquest had to be eliminated; that Japan would be occupied until this has been achieved; that the Cairo Declaration issued at the Cairo Conference in November 1943 would be adhered to and Japanese sovereignty would be confined to its four main islands. All Japanese forces would be disarmed and permitted to return to their homes. It was not intended to enslave Japan, but justice would be meted out to war criminals; the Japanese government shall remove all obstacles to the revival and strengthening of democratic tendencies and freedom of speech, religion and thought and respect for fundamental human rights would be established. Dear, I.C.B. & Foot, M.R.D., *op.cit.*, p. 1106.

⁴⁴Sleeman, C., Silkin S.C., *The Trial of Sumida Haruzo and Twenty Others (The Double Tenth Trial)*, William Hodge, London, 1951. pp. xiii - xiv.

⁴⁵Churchill wanted the summary execution of the Axis military leaders. Stalin wanted 50,000 Germans to be executed summarily. The Americans, especially President Harry Truman determined that there should be a real, not a pre-determined trial and the fairness in criminal proceedings must be established, *London Review of Books*, 11th December, 1997. p. 12. On June 7, 1945, Justice Robert Jackson, Chief Prosecutor for the United States in the Nuremberg Trials stated the American position regarding the fate of those captured as: "An inescapable responsibility rests upon this country to conduct an inquiry, preferably in association with others, but alone if necessary, into the culpability of those whom there is probable cause to accuse of atrocities and other crimes. We have many such men in our possession. What shall we do with them? We could, of course, set them at large without a hearing. But it has cost unmeasured thousands of American lives to beat and bind these men. To free them without a trial would mock the dead and make them cynics of the living. On the other hand, we could execute or otherwise punish them without a hearing. But indiscriminating executions or punishments without definite findings of guilt, fairly arrived at, would not set easily on the American conscience or be remembered by our children with pride. The only other course is to determine the innocence or guilt of the accused after a hearing as dispassionate as the times and horrors we deal with will permit, and upon a record that will leave our reasons and motives clear. Wexler, *op. cit.* pp. 303-304.

⁴⁶Schindler, D. Toman J., (ed), *The Laws of Armed Conflict: A Collection of Conventions, Resolutions and Other Documents*, A.W. Sijthoff-Leiden, Henry Durant Institute, Geneva, 1973.p. 692;Wells, *op. cit.*, p. 363; Falk R., Kolko G, Lifton J.R., *Crimes of War*, Vintage Books, New York, 1971.p. 73-75. These definition was defined by Hersch Lauterpacht, a staunch supporter of the Jewish cause, *Encyclopaedia Judaica*, Keter Publishing House Ltd., Israel, 1971. p. 291; This is considered as a quasi-revolution in international law, Wexler, *op. cit.*, p. 304-305.

⁴⁷Article 227 of the Treaty of Versailles is considered as the predecessor of crimes against peace. It was followed by the Treaty for the Renunciation of War, August 27, 1928. Wexler, *Ibid.* p. 300.

⁴⁸The notion of crime against humanity existed prior to World War II. There were cases as early as 1841 demonstrating the emergence of the concept but the idea that crime against humanity as a separate war crime from conventional war crime is usually traced to the Martens Clause of the 1907 Fourth Hague Convention Concerning the Laws and Customs of War on Land. The "Martens Clause" is named after Fyodor Martens, the Russian diplomat and jurist who drafted it. But the term was not clear under the 1907 Fourth Hague Convention and its meaning became more crystallised over the years with usage. On 28th May, 1915, it was used in a declaration condemning the massacre of the civilian Armenian population by the Turks. It was in Article 6 (c) of the International Military Tribunal Charter as positive international law, the category of crimes against humanity appeared. Wexler, *Ibid.*, p. 297-298.

⁴⁹The Tokyo Trial, the Eastern counterpart of the Nuremberg Trial was convened on 3rd May, 1946 and ended in November, 1948. 28 Japanese military and civilian leaders were charged, of whom 14 were Generals, 3 Admirals and 5 were career diplomats. Death by hanging was given to 7, life sentence to 16, 20 years to 1, 7 years to 1, 2 died during the trial and 1 was found unfit for trial. All those who were sentenced to life imprisonment were freed on parole in 1954, 1955 and 1956. *Kodansha Encyclopaedia of Japan*, Vol.8, Kodansha Ltd., Tokyo, 1983. pp. 223-225.

⁵⁰Dear, I.C.B. & Foot, M.R.D., *op. cit.* p. 350.

⁵¹Pritchard, *Gift of Clemency*, *op. cit.*, pp. 20 –21.

⁵²*Ibid.*

⁵³Sleeman, Colin, *The Trial of Gozawa Sadichi and Nine Others*, William Hodge & Co., London, 1948. p. xiv. In future will be referred as Sleeman, GSNO.

⁵⁴Turnbull, C.M., *op. cit.*, p. 222.

⁵⁵*Special Army Order, The War Office, 18th June, 1945; United Nations War Crimes Commission, 1947 - 1949, Law Reports of the Trials of War Criminals, Vol. I*, HMSO, London, 1947.

⁵⁶*File WO 235/63, WO 235/823, WO 235/830, WO 235/870, WO235/888, WO 235/904, WO 235/934, WO 235/938, WO235/939, WO235/942, WO235/947, WO235/949, WO235/966, WO235/968, WO235/971, WO235/973, WO235/991, WO235/998, WO235/1001, WO235/1003, WO235/1010, WO235/1010, WO235/1013, WO235/1016, WO235/1017, WO235/1019, WO235/1027, WO235/1032, WO235/1033, WO235/1039, WO235/1042, WO235/1047, WO235/1054, WO235/1059, WO235/1070, WO235/1071, WO235/1072, WO235/1091, Public Records Office, Kew, London; The Straits Chronicle, 24th June, 28th & 29th September, 1945; The Straits Chronicles 28th January, 20th, 23rd, 30th April, 1st May, 24th June, 26th June, 1946; Malay Mail, 6th, 7th, 11th March, 12th March, 30th April, 1st, 3rd, May, 6th May, 7th June, 24th July, 1946; Malay Mail, 27th June, 13th July, 24th July, 4th, 7th 23rd, 27th, 28th August, 30th September, 4th October, 14th October, 1946; The Straits Budget, 8th August 1946; The Straits Budget, 5th, 12th September, 30th September, 4th October, 10th October 1946; Malay Mail, 24th July, 23rd August, 1946; Malay Mail 27th August, 1946; Malay Mail 28th August, 1946; 11th October, 14th October; The Straits Budget, 5th, 12th September, 10th October, 1946; 5th June 1947,*

⁵⁷*Malay Mail, 23rd August, 1946; Malay Mail 27th August, 1946; Malay Mail 28th August, 1946; The Straits Budget, 5th September, 1946;*

⁵⁸Narayanan, Arujunan, Japanese War Crimes and British War Crimes Trials in Malacca during World War II, *Strategi, Journal of Strategic and International Relations, Volume 10, October 2003*. pp. 73-83

⁵⁹*File WO235/815, Public Records Office, Kew, London; Malay Mail 22nd April, 1946; The Straits Budget 8th August, 1946*

⁶⁰*File WO 235, Public Records Office, Kew, London.*

⁶¹Narayanan, Arujunan, Japanese War Crimes and Allied War Crimes Trials in Borneo during World War II, *Jebat, No. 29, School of History, Politics and Strategic Studies Journal, Universiti Kebangsaan Malaysia, 2002*

⁶²The New Delhi trials were the trials of the members of the Indian National Army and the Indian Legion at Red Fort, Delhi for sedition against Britain for cooperating with the Japanese and the Germans. The trials became a rallying point for Indian nationalities adding militancy to India's struggle for independence. As the trials became very unpopular for the British, they were called off quickly with simple dismissal from further service of the great majority of officers and men. Dear, I.C.B., *op. cit.* p. 565-566; Wint, G, Calvocoressi, P, Pritchard, R.J., *Total War: Causes and Courses of the*

Second World War, Vol. 2: The Great East Asia and Pacific Conflict, 2nd Edition, Penguin, London, 1989. p. 539; Green, L.C., Indian National Army Trials, *Modern Law Review*, 1948.

⁶³Picigallo, *op.cit.* .p. 120; The Royal Warrant , Army Order 81/1945 under which the British war crimes trials were held had no jurisdiction to try British subjects. The 2 British subjects mentioned above were later tried by British police courts. They were found guilty. Pritchard, *op. cit.*, p. 16.

⁶⁴Kodansha *Encyclopedia of Japan*, Volume 8, Kodansha Ltd., Tokyo, 1983, p. 223.

⁶⁵Dear, I.C.B. & Foot, M.R.D. (ed.), *op.cit.*, p. 351.

⁶⁶Lael, L. Richard, *The Yamashita Precedent. War Crimes Command Responsibility*, SR Scholarly Resource Inc., Washington, 1982.

⁶⁷Kenworthy, Lt. Col. (R), Aubrey Saint, *The Tiger of Malaya: The Story of General Yamashita and "Death March" General Homma*, Exposition Press, New York, 1953 .

⁶⁸Ward, Ian, *Snaring The Other Tiger*, Media Master, Singapore, 1996.

⁶⁹McCormack, G., "Apportioning the Blame : Australian trials for railway crimes," in McCormick, G. & Nelson H., *The Burma – Thailand Death Railway*, Silkworm Books, Chiangmai, 1993, pp. 85-119.

⁷⁰Silver, L.Lynette, *Sandakan: A Conspiracy of Silence*, Synergy Books International, Kuala Lumpur, (date not available).

⁷¹Mallal, B.A., 'The Double Tenth Trial, War Crimes Court in re Lt. Col. Sumida Haruzo and Twenty Others', Malayan Law Journal Office, Singapore, 1947, p. 213; Sleeman, Colin (Ed.), *Trial of Gozawa Sadaichi and Nine Others*, William Hodge, London, 1948; Sleeman, C., Silkin, S.c., (ed), *Trial of Sumida Haruzo and Twenty Others (The Double Tenth Trial)*, William Hodge, 1951; Picigallo, R. Philip, *The Japanese on Trial: Allied War Crimes Operation in the East 1945-1949*, University of Texas Press, London, 1979; Pritchard R.J. wrote five articles- *The Nature and Significance of British Post-War of Japanese War Criminals, 1945-1948*, *Proceedings of British Association for Japanese Studies*, Vol. 2 (1), 1977; *The Historical Experience of British War Crimes Courts in the Far East 1946-1948*, *International Relations*, Volume VI, No. 1, May, 1978; *Lessons from British proceedings Against Japanese War Criminals*, *Human Rights Review*, Vol. III, Summer, 1978; *The Gift of Clemency Following British War Crimes Trials in the Far East*, *Criminal Law Forum*, Vol. 7, No. 1, 1996; and Smith C. Simon, *Crimes and Punishment: Local Response to the Trial of Japanese War Criminals in Malaya and Singapore, 1946-1948*, *South East Asia Research*, March, 1997; Cooper, Bryan C., *Decade of Change Malaya and the Straits Settlements 1936-1945*, Graham Brash, Singapore, 1998.

⁷²Catwell, D. John, *op.cit.*, p. 213.

⁷³Transcripts of 26 trials and works of Lt. Colonel Craig Hallam, Major Dennis, Dr. Allen, Reverend Babb, A.P. Spooner and others are available at the Imperial War Museum, London. But these transcripts are not as complete as those found at the Public

Records Office, London. Pritchard, R.J., 'A Survey of Tokyo War Crimes Trial Records in Britain', *Proceedings of British Association for Japanese Studies, Volume (1) (1)*, 1976, p. 213.

⁷⁴Smith, C. Simon, *op cit*, pp. 46, 56.

⁷⁵Pritchard, J.R., 'Gift of Clemency', *op.cit.*, p. 25.

⁷⁶Cook, H.T. & Cook, T.F., *Japan At War: An Oral History*, The New Press, New York, 1992, p. 420.

⁷⁷Smith C. Simon, *op.cit*, p. 48 & 51.

⁷⁸*The Times*, 9 July 2000.

⁷⁹Responsibility for the investigation and bringing to trial of persons accused of crimes against British nationals devolved upon General Headquarters, Allied Land Forces South East Asia (ALFSEA) whose files are in WO 325. For Files of the Judge Advocate Department concerning South East Asia see particularly WO 311/538 to WO311/565. Card indexes and records cards concerning investigations and trials in South East Asia form the classes WO 356 and WO 357. Files on policy and numerous individual cases are scattered throughout the Military Headquarters Papers, Far East Forces, in WO 203. The principles references are: WO 203/2080, WO 203/4571A, WO 203/4571B, WO 203/4926A, WO 203/4926B, WO 203/4927A, WO 203/4927B, WO 203/5592 to WO 203/5596, WO 203/6086 and WO 203/6087. Some are closed for 75 years. Quarterly Reports of the Far East Land Forces Investigation teams, 1946-1947, are in WO 268/102 to WO 268/104. Documentation on crimes committed against Allied prisoners of war is scattered throughout the records of the War Office's Directorate of Military Intelligence (WO 208). Transcripts of proceedings in British Military Courts in the Far East are among the war crimes papers of the Judge Advocate General's Office in WO 235/813 to WO 235/1117. Samples of charge sheets filed against individuals accused of war crimes, may be found in TS 26/803 to TS 26/847. Cantwell, *op. cit.*, pp., 213-214.

⁸⁰PhD thesis of Arujunan Narayanan. The study took a period of seven years.

⁸¹Piccigallo, *op.cit*, pp. 06, Green L.C., *The Trials of Some Minor War Criminals*, *Indian Law Review*, No. 4, 1950.

⁸²Picigallo, *Ibid*, p. 110. Smith, S., *op.cit.*, P. Bryan, Cooper C, *Decade of Change, Malaya & the Straits Settlements 1936-1945*, Graham Brash, Singapore, 1998, pp. 591-614.

⁸³Modder, Ralph, *The Singapore Chinese Massacre 18 February to 4 March 1942*, Horizon Books, Singapore, 2004.

⁸⁴The law suit was brought by military and civilian veterans from Britain, the United States, Australia and New Zealand with no financial or legal assistance from the government of the United Kingdom. There are about 25,000 veterans in these countries. They are not happy with the apology given by the Japanese Prime Minister, Ryutaro Hashimoto and they are demanding for an official apology from the Japanese government. They are also unhappy with the British Prime Minister, Tony Blair and his officials for

not pressing their case during his visit to Japan in January, 1998. There were also the view that payments should be also given to surviving victims of the Pacific War. *The Times*, 13th January, 1998; *The Times*, 20th February, 1998. In accordance with the San Francisco Peace Treaty, Japan paid a token some of £76 to each British service personnel and £45 for British civilians and less for many others. Some of the war veterans feel that US\$20,000 should be the correct amount as that was the amount the US government paid to the Japanese who had been resettled away from military installations after Pearl Harbour was attacked despite no violence inflicted on them. *Bamboo Shoots*, Tuesday, 26th September, 1995 at <http://www.baronage.co.uk/bamboo-htm/press-0.1.html>.

⁸⁵*The Times*, 13 January 1998.